CHESAPEAKE & OHIO RAILWAY CO. v. ANDERSON.—Decided at Staunton, October 5, 1896. *Cardwell*, J:

1. INSTRUCTIONS—*Evidence tending to prove a supposed case.* Where there is evidence tending to prove a supposed case, however inadequate, or to however little weight it may be entitled, it is best and safest for the trial court, if requested, to give an instruction covering the case supposed.

2. RAILROADS—*Trespassers—Expulsion by brakeman.* Expulsion of trespassers from the cars of a railroad company is not a duty incident to the position of brakeman, and authority to do so does not arise by implication. But if it has been the custom of brakemen to eject trespassers, and the railroad company knows or ought to know of that custom, authority to do so may be inferred and the company be held liable for damages resulting from any improper and unlawful exercise of the authority by the brakeman.

3. RAILROADS—*Trespassers—Expulsion by brakeman—Rules of company.* If the rules and regulations of a railroad company require brakemen to report trespassers on trains to their conductors, and it appears that the brakemen on the trains run by a designated conductor were in the habit of expelling trespassers from said trains without orders from the conductor, but in his sight or hearing, and with his approval and assent at the time, and it does not appear that the officers of the company knew of such habit, then all expulsions so made must be construed to be the acts of the conductor, and not violations of the rules and regulations of the company.

4. WRITS OF ERROR—*What not accepted as true—Case at bar.* Although a case upon a writ of error is heard in the appellate court as upon a demurrer to the evidence, yet the court is not obliged to accept as true what, in the nature of things, could not have occurred in the manner and under the circumstances narrated, or what is not susceptible of proof. In the case at bar the accident could not have been caused in the manner stated.

KNIGHTS OF PYTHIAS v. WELLER.—Decided at Staunton, October 1, 1896.—*Harrison*, J:

1. CORPORATIONS—*Expiration of charter—De facto corporation.* When the limit of corporate existence is fixed, either by charter or a general law, the corporation is dissolved when that limit is reached, without any action to that end either by the State, or the members of the corporation. Thereafter it is without power to adopt by-laws or do other like acts. It cannot set up the defence of by-laws made by it as a *de facto* corporation to avoid its contracts.

2. CORPORATIONS—*Effect of general laws on charter—Acts of Congress (1884) omitting limitation on duration of charter.* General laws affecting corporations form as essential parts of the charters of said corporations as though copied into them. The Act of Congress of 1884 which struck out from the general law the twenty-year limitation previously imposed on all charters, was entirely prospective, and applied only to corporations thereafter chartered.

3. PLEADING—*Variance between declaration and proof.* If a declaration avers that the contract sued on was made by the defendant corporation, and the proof shows that the contract was in fact made by another corporation whose liabilities

had been assumed by the defendant, but there is no averment in the declaration that the liability had become that of the defendant, there is a variance between the allegation and the proof, and the latter should be rejected.

COUNTY OF ALLEGHANY v. PARRISH.—Decided at Staunton, October 1, 1896. *Buchanan*, J:

1. COUNTY PROPERTY—*For what purpose to be used—Powers of county courts over—Lease for a law-office.* County courts had no authority either under the Code of 1819 (1 Rev. Code, ch. 71, sec. 16) or the Code of 1849 (ch. 50, sec. 1) to authorize or permit the use of lands acquired for a courthouse, jail, and other public buildings, for any other purpose than those mentioned in the Codes. The power of acquisition was for a special purpose, and the use was confined to the purpose for which authority to acquire was given, and subject to the restrictions imposed; and it is immaterial whether the land was acquired by gift, or purchase, if held under the general law. The uses to which the court was required to put the land exhausted the purposes for which it could be used. It had no authority to authorize the erection of a law office on the land upon payment of a ground rent.

2. COUNTY PROPERTY—*Uses of—Authority of board of supervisors over*, The Act of Assembly placing the corporate property of counties under the control and management of the board of supervisors of the counties (Acts 1878-'9, ch. 58, sec. 7) did not change the uses to which the public property might be put, but is to be construed in connection with the prior law designating such uses, and the designation of these uses is not discretionary, but mandatory.

3. COUNTY AND MUNICIPAL OFFICERS—*Powers to contract—Ultra vires contracts—Estoppel.* The agents, officers, or governing body of a municipal corporation, or a county, cannot bind the corporation or county by a contract which is beyond the scope of its powers. Such contracts are *ultra vires* and void, and, in actions thereon, the want of power to execute is a complete defence, and the county or corporation is not estopped from setting it up.

4. ADVERSARY POSSESSION—*Vendor and vendee.* A defence based on adversary possession for a sufficient length of time to bar the plaintiff's claim cannot be made where the plaintiff and the defendant occupy the relation of vendor and vendee, with the legal title outstanding in the vendor, and especially where the suit is based upon that relation.

GUGGENHEIMER & CO. AND OTHERS v. JOHN S. MARTIN & CO. AND OTHERS.—Decided at Staunton, October 5, 1896.—*Buchanan*, J:

1. SUBSTITUTION—*Lien on two funds—One fund partnership assets, the other assets of one of the firm.* In order for a creditor who has a lien upon one fund to be entitled to substitution to the right of a creditor who has a lien upon that and another fund and who has exhausted the common fund, it is necessary that both funds should be the property of the same debtor, and this condition does not exist where the assets of a partnership constitutes one of the funds, and the individual property of a member of the partnership constitutes the other fund, unless that partner has in equity become entitled to the partnership assets, and become primarily liable for the partnership debts.